

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other Customer)
Information)

CC Docket No. 96-115, FCC 96-221

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**Reply comments of the
Information Industry Association**

The Information Industry Association (IIA) hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking¹ in this proceeding. The Commission has initiated this rulemaking pursuant to requests made to the Common Carrier Bureau by several local exchange carrier associations for clarification of their responsibilities regarding use and protection of customer proprietary network information (CPNI) under Section 702 of the Telecommunications Act of 1996 (the 1996 Act).² As is set out in greater detail below, IIA encourages the Commission to use this opportunity to adhere strictly to the letter and spirit of the law as set forth in Section 702 of the 1996 Act by ensuring that providers of telephone exchange service make available subscriber list information upon request on a nondiscriminatory and unbundled basis.

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Notice of Proposed Rulemaking (May 17, 1996) (hereinafter *Notice*).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§151 et seq.)(hereinafter *the 1996 Act*)..

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IIA is a trade association of more than 550 companies engaged in the generation, distribution, transmission and use of information products and services. IIA's members have been at the forefront of providing new information and telecommunications related services to the public. Therefore, any proceeding which affects the use and dissemination of information obtained by telecommunications carriers will have a direct impact on our members' services and markets.

In the initial commenting round, several parties addressed the requirements governing the availability and use of subscriber list information (SLI) under section 222(e) of the 1996 Act. IIA believes that the Act is clear in requiring telecommunications carriers to provide directory information to any person for the purpose of publishing directories. Moreover, IIA believes that SLI should be provided in any format requested, as long as it is a format already used by the carrier. We appreciate the opportunity to reply to the various comments that have been received on this current proceeding.

Equal access by all competitors to subscriber list information (SLI) should be ensured in order to promote competition in directory publishing.

Section 222(e) of the 1996 Act states in relevant part that a "telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."³ IIA strongly supports the practice of providing SLI for the purpose of publishing directories in any format to all information service providers on a non-discriminatory and unbundled basis, and urges the

³ 1996 Act sec. 702, §222(e).

FCC to require that all carriers provide this information in any format already created for the carrier's own purpose.

Due to their unique relationship with their customers, carriers are able to collect substantial quantities of information concerning their subscribers' use of telecommunications services. SLI is defined in Section 222(e)(3)(a), (b) of the 1996 Act as any information which identifies the "listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications," and any information "that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

IIA strongly disagrees with suggestions such as those raised by Cincinnati Bell that carriers should be permitted to provide this information in the format of their choice.⁴ This will hinder the development of new services by requiring information service providers to allocate their resources to the decompilation or assimilation of SLI to their own databases. In order to encourage economic efficiency, carriers should be required to provide this information in any format requested, if it is available to the carrier in that format.

IIA supports those commenters who have argued that SLI should be provided on an unbundled basis.⁵ Many information providers find useful only certain portions of a carriers' SLI database and have no interest in purchasing additional products or services. By requiring carriers to unbundle their SLI databases, the FCC will insure that financial resources of neither the carrier nor the competing information provider are wasted on transactions in information that will never be utilized.

⁴ Cincinnati Bell Comments at 12.

⁵ Ameritech Inc. Comments at 18; NYNEX Comments at 21-22; Yellow Pages Publishers Association (YPPA) Comments at 6.

Finally, Section 222(e) of the 1996 Act requires carriers to provide SLI “under nondiscriminatory and reasonable rates, terms and conditions.”⁶ At most, the FCC should interpret “nondiscriminatory and reasonable rates” to limit a carrier’s charge to information service providers for SLI to no greater than the cost to the carrier itself of compiling and gathering the data. Ideally, SLI costs should be less and should only reflect the marginal costs of providing the data. As the Commission is aware, these databases have been compiled by carriers in connection with their regulated offerings and the costs have been recouped from ratepayers. They should not now be allowed to extract excessive profits from this information.

The FCC should encourage the further use of SLI for other purposes.

IIA acknowledges that the purpose of section 222(e) is to require carriers to provide SLI for the publishing of directories. However, the primary underlying principle of the 1996 Act is to promote competition. Therefore, while recognizing customer privacy concerns, IIA would urge the FCC to also encourage carriers to make SLI available to information service providers at reasonable rates and on a non-discriminatory basis through licensing and contracting agreements for the marketing of telecommunications related services and products. The FCC should make clear that its authority under sections 222 and 702 of the 1996 Act derives less from the nature of the information involved than from its source. Telephone exchange service providers will in the vast majority of cases have access to information concerning the greatest number of potential customers for electronic commerce. Without encouragement by the FCC to license SLI for purposes other than directory publishing, carriers will gain an enormous

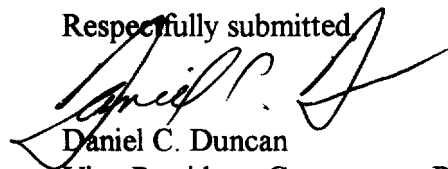
⁶ 1996 Act sec. 702, §222(e).

competitive advantage over other information service providers. Restrictions on a carrier's discretion in making SLI available are required in order to promote competition; such restrictions must not be read, however, to suggest any limitations on the ability of carriers or other owners of SLI to make and enforce license agreements not inconsistent with the statute with respect to such data. Indeed, the opposite is true; outside the specific circumstances addressed by the statute, the rule with respect to such licenses is freedom of contract. See ProCD, Inc. v. Zeidenberg ____ F. 2d ____ (7th Cir., June 20, 1996). By encouraging the provision of SLI for purposes other than directory publishing, the FCC can only further this important principle of law and the overall purpose of the 1996 Act.

Conclusion

IIA appreciates the Commission's willingness to solicit industry comments on the full range of issues raised by the CPNI provisions of the 1996 Act. In order to remove barriers to entry in the information services and telecommunications the FCC must insure that SLI and other databases directories are provided on a nondiscriminatory and unbundled basis.

Respectfully submitted



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